



THE COMMONWEALTH OF MASSACHUSETTS

WATER RESOURCES COMMISSION

100 CAMBRIDGE STREET, BOSTON MA 02114

Meeting Minutes for May 12, 2005

Members in Attendance:

Karl Honkonen	Designee, EOE
Marilyn Contreas	Designee, DHCD
David Terry	Designee, DEP
Gerard Kennedy	Designee, DAR
Mark Tisa	Designee, DFG
Jonathan Yeo	Designee, DCR
Joseph Pelczarski	Designee, CZM
Gary Clayton	Public Member
David Rich	Public Member
Bob Zimmerman	Public Member

Others in Attendance:

Mike Gildesgame	DCR
Linda Hutchins	DCR
Michele Drury	DCR
Sara Cohen	DCR
Bruce Taggart	USGS
Ted McIntire	Town of Reading
Peter Hechenbleikner	Town of Reading
Kerry Mackin	IRWA
Susan Speers	Watershed Action Alliance
Ron Sharpin	DCR
Vandana Rao	EOEA
Martha Stevenson	LWVM
Lee Dillard Adams	DEP
John Reinhardt	DEP
Kathy Baskin	EOEA

Agenda Item #1: Executive Director's Report

Hutchins provided an update on the hydrologic conditions

- March and April precipitation were above normal. The significant recharge period for the Water Year is essentially over now that the trees are in bloom. There has been 110% of normal precipitation for the Water Year. Hutchins referred to the chart in the handout which compared this Water Year to normal.
- Ground water levels were above normal in April.

- Streamflow for April was mostly in normal or above normal levels. Streamflow rose at the end of March in response to rain events, but receded in mid-April, when there was about two weeks without rain, and finally rose again to the normal or slightly above normal range.
- Reservoirs are full. This is good for this time of year, as the higher water use period is approaching. The Quabbin has been spilling since March 27th.
- Fire danger: the National Weather Service issued a red flag warning, meaning that brush fires are likely and the possibility for the development and growth of brush fires is at a very dangerous level due to lack of rain for the past few days, low humidity and high winds. But the Weather Service also issued a frost warning for tomorrow morning, which is very unusual to happen in the same 24 hour period. Hutchins expected that the frost situation would mitigate the fire situation. She added that rain was predicted for the weekend, but won't amount to much.
- Drought forecasts: NOAA's Climate Prediction Center Drought Outlook does not suggest that Massachusetts will be entering a drought through July of this year. Precipitation was low for the month of May, so far, in the Western and Connecticut River Valley regions, but these are the areas that are supposed to get the most rain this weekend. This should help.
- Temperatures have been below normal and are forecast to remain below normal for the next ten days. Precipitation is supposed to pick up through the end of the month.

Honkonen gave the Executive Director's Report:

- The ITA application from the Town of Reading will not be voted on today. The Town has been working on analyzing the proposed draft conditions. They have met extensively with town officials, the Ipswich River Watershed Association and other interested citizens, to analyze and revise the draft conditions. Staff just received comments from the Town yesterday. The intention of WRC Staff is to assemble these revised conditions into a revised Staff Recommendation. A vote will be taken on the final Staff Recommendation at the June 9th WRC meeting. Since this is not on the agenda today, Honkonen did not feel it would be appropriate to get into a significant debate on the contents of the conditions. Rich said this has gone on long enough. He said the WRC has an obligation to move on these issues one way or the other. He understood that the Commission also has an obligation to review everything provided by the applicant and all the comments and to respond to these, but there comes a time when a vote must be taken, whatever that vote might be. This should be settled and he said that he hopes the Commission is able to vote on it in June. The longer this goes on, he said, the more complicated it becomes. Hechenbleikner said the Town wanted to get the June 9th vote behind them and so get on with the process. Mackin said she would submit comments in response to the Town's proposal, which she received yesterday. She encouraged the WRC to take an objective stance based on the law. She said that any aggrieved party, not just IRWA, could exercise what rights they had. This is precedent setting, she said.
- The EPA's targeted watershed grant program was discussed at a previous meeting. Five applications have been received for this program. The review is being finalized and the Secretary will be sending recommendations to Governor Romney's office to be forwarded to the EPA. Honkonen said that it is pre-mature for him to discuss this in detail, but he hopes that next month, he can describe them more fully and give the WRC an idea of the status of the proposals.
- Honkonen reminded the Commission about EOEA's watershed Implementation Grants, also discussed at a previous meeting. Fifteen applications have been received. These have been

evaluated and narrowed down to five. Recommendations have been made to the Secretary. These grants have not been awarded yet, but it is hoped that they will be soon. The grants are designed to implement projects and solve issues that were identified in the five-year watershed action plans.

- The Watershed Protection Trust was formed to help oversee the Division of Water Supply Protection and MWRA's efforts in their watershed lands. It will meet next Wednesday to review progress on the workplan for FY05 and review workplans and budgets for FY06. Honkonen suggested that Yeo give the WRC an update on how this is working at a future meeting.
- Honkonen announced that after 20+ years in state government, he would move on to different opportunities. He is looking at other options closer to his home in Southern Maine. He will be working on a half-time status for about another month. Kathy Baskin will be taking over as the Secretary's designee and the Executive Director, as of July. He said he had learned a lot through his association with the Commission. Yeo said that he has worked with Honkonen for the past 20 years and he thanked him for his service to the Commonwealth.
- Honkonen asked if any Commission members had questions about the enclosures in this month's WRC package. None were raised.

Agenda Item #2: Discussion – DEP Proposed Regulations for Biotechnology

Dillard Adams handed out copies of her PowerPoint presentation. There are 3 parts to the biotech regulatory package: Air, Hazardous Waste and Industrial Wastewater. These are permits by rule. The goal was to try to eliminate the administrative process that slows down the establishment of manufacturing industries while maintaining environmental protection. The emission and discharge standards have been strengthened and clarified while the administrative or permitting review has been reduced or eliminated. The wastewater and air quality portions of this regulatory package are applicable only to biotech companies. "Biotech" is defined as products derived from living systems and regulated by FDA as a drug, biologic or medical device. These proposed regulations are focused on the industries that are most prevalent in Massachusetts. FDA currently has an extensive regulatory process in place for these industries. Environmental compliance costs for these industries are trivial compared with costs of FDA regulation.

For industrial wastewater, the proposed regulation combines all the regulatory requirements for industrial wastewater management. Statewide numerical limits and monitoring requirements are proposed. In addition, seven fairly common, simple wastewater treatment systems are pre-graded and pre-approved. Certified operator requirements are defined for these systems. There are special reporting requirements including a compliance certification and a toxics report. The regulations apply to companies discharging to Publicly-Owned Wastewater Treatment (POTW) systems that have an EPA-approved industrial pretreatment program. They do not apply to the MWRA because this is a "delegated" system. Companies within the MWRA service areas must comply with MWRA's regulations. If a biotech company wants to locate in an area where the POTW does not have an industrial pretreatment program, they will be subject to the other state permitting requirements. Compliance with these new regulations exempt a company from compliance with the provisions of 314 CMR 7.00, 314 CMR 12.00 and generally from 257 CMR 2.00.

The expected discharges from biotech firms were considered. It is hard to characterize the waste stream from biotech firms and determine what type of contaminants may be present because so many different types of processes are covered by the term “biotech”. Other states programs were investigated to determine if there were any programs similar to this proposal. Nothing was found. MWRA was consulted as well, and said it was not much different than regulating a food processor. It is based on the constraints of the wastewater treatment plant for meeting its limits for effluent and/or sludge. Using this information, POTWs that may accept waste from these types of companies were investigated in order to determine a “safety net” standard. In many cases, the local limits on these waste streams will be more restrictive than any standards the state will set. In cases where the local limits are less restrictive, these proposed regulations will act as a safety net. This is a different approach than what has been taken in the past. The pollutants of concern for EPA were also examined. As another criterion, it requires that the discharge does not conflict with the POTW’s waste levels. POTW local limits will always apply. Only in areas where these limits are less strict will the state limit apply. In terms of effluent limits, biannual monitoring with continuous pH monitoring is required. This gets reported to the POTW.

For wastewater treatment systems, what is commonly in use was reviewed. The operator requirements are delineated for both 1I and 2I systems. The requirements for on-site operators are reduced when companies have alarmed and automated systems in place. Most biotech companies are new and will have state of the art treatment systems.

Registration is needed by both the Board of Certification and DEP. There is compliance certification – a senior level officer of the company must certify that he or she has read the regulations and knows what the company is responsible for. There is evidence that this helps with compliance. There is a requirement for a one-time toxics report before connection to a POTW. If there is a change in chemicals used, the company is required to update this report. DEP is hoping to learn if it is possible to develop industry-wide standards.

Public hearings are scheduled for the last week in June. The regulations are on the Web now. The comment period will open on May 23rd and close on July 11th. It is hoped that the regulations will be promulgated by the Fall of 2005.

Tisa asked how this proposal compares with MWRA regulations. Dillard Adams answered that these limits are less restrictive than what is typical of MWRA permits because these regulations are meant to be a safety net. These are intended to fill a gap where there is a gap. Reinhardt added that these are not meant to be protective for all individual POTWs. The approach is analogous to the federal categorical approach. If a local treatment plant needs to be stricter than these regulations, it is free to do that. If not, the safety net is there. Tisa asked why DEP did not just adopt the MWRA regulations. Reinhardt answered that the MWRA composts its sludge, so therefore must have stricter regulations. Many POTWs in Massachusetts do not do this, therefore the requirements do not need to be as stringent. If such a strict standard was required, the industry would rightly say that there was no justification for this. Yeo added that the MWRA’s situation is very different because of the reuse of the biosolids. When he was at MWRA, there were a number of enforcement actions, but biotech was rarely an offender. He did not foresee any environmental concerns from discharges from these sorts of facilities. The safety net approach is a good way to go, he said.

Clayton said that he appreciates that work that has been done to develop a clear and streamlined regulatory system. However, he is concerned that the need for streamlining may be driven by the lack of resources that DEP has to implement programs. He is concerned about the cuts that all environmental agencies have seen over the past several years. If the reason for streamlining is because the agencies do not have the resources they need to protect the public health and safety, he said, this is a concern. He noted, over time this industry will mature, certain initiatives that were cutting edge may soon become dated. He asked if there was a mechanism in these regulations whereby the DEP could evaluate how this approach is working, because this industry is likely to change very rapidly over time. Dillard Adams said that the proposed regulations do not have a requirement to reevaluate the approach or standards. DEP explicitly retains its enforcement authority and the regulations provide a more important tool for evaluating whether there are additional things to include in these performance standards, but there is no requirement. Clayton suggested that reevaluation of the approach be considered. Dillard Adams then commented that it is true that DEP's resources are strapped, but this proposal is not inspired by the need to streamline to address lower staffing levels. EOEA and Economic Development were part of a group that convened to determine what could be done to attract and maintain the biotech industry in Massachusetts. These regulations do not compromise environmental standards. In many ways, they clarify and strengthen them.

Pelczarski asked why 15 days was chosen for the reporting requirement, if there are so many automated systems in this industry. This is a long time if there is an excessive exceedance. Reinhardt said that DEP might consider having separate types of notification. It depends on the local requirements. Dillard Adams suggested that comments from the Commission would be accepted. She then said that there were internal questions because this is not something DEP normally regulates. There were questions about oversight of the biological components of the waste stream. DEP would like to work with the agencies that have direct authority over the biological components. Right now the standard for discharge of biological waste is zero – it has to be sterilized. The agencies that regulate the sanitary code are the Department of Public Health, and local Boards of Health. The research situation in this area involves volunteers at the local level. DEP feels that this question will need to be addressed in the public hearings.

Pelczarski asked about drugs taken by fish and animals. Dillard Adams replied the companies are set up to meet the zero discharge requirement and to provide the types of checks that are required by FDA. This provides a lot of documentation.

Kennedy expressed concern that it may be premature to vote on regulations that have not been out to public comment. The public comment process could result in changes to the regulations that have been presented to the WRC. Honkonen asked if the vote should be postponed until after the public comment period. Reinhardt said if the public comment process resulted in significant changes, DEP would have to hold the public hearings again. If the public comment period results in unsubstantial comments, the regulations, as they stand today, will not be changed. Honkonen asked if WRC approval was needed before DEP took the regulations to public hearings. Reinhardt said no, the statute is vague; it just requires WRC approval. Honkonen asked if the Commission was reluctant to vote on the regulations before the public comment period was ended. Zimmerman said that he would like to see the public comments before he voted. He is not familiar with the biotech field. He thought it would be good to hear what others had to say. Clayton agreed and asked that the comments be presented and an

explanation given of it these resulted in changes and why. It was decided to table this until after the end of the public comment period. Kennedy said it would be helpful to have DEP's responses to comments report before the vote.

Agenda Item #3: Presentation and Discussion – Implementation of the Water Policy Task Force Recommendations

Honkonen reminded the Commission that there had been several presentations concerning the development of the water policy. The policy is now at the implementation stage. Baskin, the special assistant for water policy implementation, will be responsible for implementing the policy.

Baskin said that she would be working with EOEA and WRC staff to implement this policy. The main principals of the water policy are to keep water local; to protect clean water or restore impaired waters; to protect and restore fish and wildlife habitat; and to promote sustainable water resource management. The policy wasn't meant to be all encompassing, but it has many important features. The policy focuses mainly on water quantity. But the intent is to fold in water quality wherever possible. The WRC will be important in helping review information developed by the agencies for the policy and she hopes this will be an active involvement. She distributed an updated table listing the recommendations. The recommendations that will have the most active WRC involvement have been starred on the table. The number of stars indicates the intensity of WRC involvement.

Recommendation #1: to create a stress framework. The purpose of this is to develop performance standards, based on the condition of the river, to restore the river. It is primarily based on streamflow, but it also considers water quality and biology. This is one of the most important, comprehensive and complicated recommendations. It is expected that this work will start this summer. One key component, updating the water conservation standards, is already on-going. A draft of this update should be presented to the WRC by July.

Recommendation #2: to develop guidance and planning material. Work has been started, but has been stalled to due staffing shortages at DCR. However, the vacancy has been advertised. Water budgets and water assets are moving along. Water Assets – Phase 1 should be completed by the end of this fiscal year. The second phase has been posted as an RFR. Some excellent proposals are expected. The last portion of this recommendation is the integrated water resources management plan. DEP is taking the lead and should complete a draft soon.

Recommendation #3 is very specific and probably won't involve the WRC too closely. This is to draft legislation to require communities to have enterprise accounts, so that the money from water rates can be used to fund water-related projects directly. There is legislation that gives communities the option to establish enterprise accounts, but does not require this.

Recommendation #4: increase treated wastewater recharge and reuse is dependant on hiring a staff person, to be housed at DEP, to help convene a group to develop standards for this activity. There is some money to hire a contractor. That person should start in the next fiscal year (July). Baskin does not know a lot about an aspect of this recommendation: board of health tracking and regulation of septic maintenance, but these tasks will be overseen by the new hire. Zimmerman

asked if the administration would be sponsoring legislation on septic system utilities, which he believed were illegal in Massachusetts. Baskin said that this could be looked into. Honkonen added that the Town of Acton does have a septic utility. The Board of Health set up the utility. Each homeowner is assessed a fee to track septic system pumping. Honkonen suggested that the WRC invite Brent Reagor, the Acton Board of Health agent to give a presentation. Baskin suggested that in the meantime, it should be investigated how this utility was established.

Recommendation #5: promote storm water recharge. Baskin stated that some of this is already going on. DEP's storm water management policy does have a performance standard that requires that there be recharge, but this is only in areas where DEP has jurisdiction (wetlands and riverfronts). This recommendation is to determine how to expand this jurisdiction to upland areas. DEP will be developing guidance with two new hires, expected to start in the next fiscal year. Another aspect of this recommendation is to work with MEPA to make sure that in the scopes or certificates that are issued, the water policy is promoted wherever possible. Another item under this recommendation is to promote the establishment of storm water utilities. There are draft guidelines and Chicopee does have a storm water utility.

Recommendation #6 advances effective management of water supplies. This will be completed further out on the timeline. The purpose is to promote aquifer optimization.

Recommendation #7: to protect and restore critical land and water resources. This looks at target fish and river continuity. Gildesgame added that target fish work will fold itself into recommendations 1 and 2. The WRC will get presentations on this work.

Recommendation #8: to promote sustainable development, to strengthen SRF requirements to protect priority water resources, and to provide on-going technical assistance to stake holders.

Recommendation #9: to develop guidance and planning tools to help all involved in the process. There is a "growing smarter" tool kit that's being developed for EOEa by a consultant. This is supposed to be completed by the end of this fiscal year.

Recommendation #10 deals mostly with working more closely with the transportation agencies to make sure that they are aware of habitat as they are developing.

Clayton said that this was very helpful. He said that implementation of the water policy will take a lot of work. He noted that implicit in most of these recommendations was the idea of conservation. He would like to see this stated more explicitly. Baskin agreed. The water policy has broad goals, but it is intended to make sure that there is enough water for people to drink and fish to swim in. Honkonen said that any discussion of any of these recommendations should include a conservation component. Gildesgame said that the water conservation standards were being updated as part of the water policy. The water conservation task force was taking a broad approach to conservation. Other things that are being considered by the water conservation task force are potential gray water reuse, incorporation of the Lawn and Landscaping standards more fully, and the implications for permitting. Baskin said another thing that was being considered as part of the overall water policy was a desalinization policy. This supports the broad idea of conservation.

Rich said that this was an aggressive program with a relatively short time frame. He asked if all this work could be accomplished. As a water supplier, he was concerned that more and more regulations were being enacted. He suggested that Massachusetts Water Works Association (MWWA) be kept aware of any of these updates. Baskin agreed that the schedule was ambitious and acknowledged that there had been slippage already because of staffing shortages, but she said they were expecting to move along and make progress. In terms of involving MWWA, she agrees this is wise. Drury added that there were a few water suppliers on the water conservation task force. Honkonen said it was decided early on that we need to be more comprehensive in how we manage water resources in the Commonwealth. Secretary Herzfelder does not want this to drag on. She wants something to be accomplished during her tenure. This may not all be completed in the exact timeframe, but it is hoped to get as much done as possible.

Hutchins remarked that the data collection items of the water policy seem to be neglected. One of the overarching understandings was that data collection was to be on-going throughout this process. Data collection supports all of the other recommendations. There is a crisis with funding stream gages in Massachusetts. There has been talk about money for new gages but increased costs of future operation and maintenance of the historic gages are not funded. If something is not done, these gages will be lost and this will interrupt the historic record and make it difficult to improve the condition of our rivers. This should be a priority over the next few months. Baskin suggested coordination and prioritization of what should be saved. Gildesgame said that there really were none that could be given up. This has been an on-going problem for a couple of years, he said, trying to obtain the matching funds for the USGS cooperative programs to keep these gages running. Honkonen said that there have been discussions and some capital funds have been proposed to add or upgrade existing networks. He said he understood that if the gages are not maintained, then none of the recommendations of the water policy would be achieved. Taggart said that the USGS would like to help in this process. He added that USGS was assessing the impacts of highway runoff on the environment to better understand this and develop some best management practices.

Mackin asked that watershed associations be incorporated as partners in this process. The effort by DEP to reevaluate the safe yield requirements of the WMA under the Advisory Board should be more explicitly reflected in the recommendations and tasks, she added. Terry said that this was incorporated under recommendation #6. Gildesgame said that the task force which developed the policy included a broad range of interest groups, including watershed associations. He said that he assumed that before anything was promulgated or decided, these organizations would be involved in developing and commenting on the tasks outlined in the recommendations.

Speers asked about the desalinization policy. Is it new and who is the contact person? Baskin replied that she would be taking the lead, but Todd Callaghan of CZM has been critical in getting this initiated. Two plants are already going through permitting and a third is proposed. We want to have guidelines and policy in place before any more are proposed. A desalinization policy is also in line with the Secretary's estuary initiative. Speers asked that the watershed associations in the areas where these plants will be located are kept informed. Baskin stated that the policy will not affect the plants that are nearly completed. Gildesgame added that some of these proposals will be subject to the Interbasin Transfer Act and Ocean Sanctuaries Act. Pelczarski asked if the proposed Hull plant would be subject to the ITA. Drury replied that it was not clear yet. The town is still investigating options. They are not sure if the plant will be

used solely for the town of Hull, or if it will be a regional plant. The plan is conceptual right now. Baskin said the desalinization task force would be looking at all of the permitting implications.

Rich asked if there was any thought given to having stakeholders working with the agencies on these recommendations. Rao answered that before the water policy was developed, the approach was to ask stakeholders what their top priorities were. This drove the content of what the task force would be discussing. She said that the water conservation task force had representatives from water suppliers, environmental organizations, and state agencies. This approach will be continued. She said that the names on the handout were just the agency people who would be facilitating the tasks, but the understanding was that there would be broad representation on any task force that would be working on these recommendations. Rich said that those involved in developing the policy and recommendations should be involved all the way through so that the end result is not unworkable.

New Business

Rich said that there had been a meeting in Brockton at which DEP staff made three presentations. He thought they did an excellent job. One topic was the Water Management Act. This is a difficult issue right now for water suppliers, but Duane LeVangie did a wonderful job in presenting the Department's position. The second topic was perchlorate. The presenter also did a good job. The third issue was upcoming regulatory changes, another excellent presentation. DEP was very well represented at this meeting.

Meeting adjourned